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# Disaster Relief--Is It Spelled F - E - M - A?

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**DISASTER RELIEF --  
IS IT SPELLED F-E-M-A?**

**KARL F. SCHNEIDER**

**ABSTRACT**

The Federal government's response to natural disasters has been inadequate. GAO, the National Academy of Public Administration, FEMA IG, and FORSCOM have criticized Federal disaster response, and FEMA in particular.

This paper traces the history of Federal disaster response, and uses these recent reports to craft legislation to correct shortcomings in Federal disaster response. It recommends --

- o a comprehensive Federal disaster response statute to simplify, clarify, and focus Federal response
- o FEMA be depoliticized
- o creation of a White House Disaster Response Unit
- o DOD continue to provide assistance consistent with civilian control and priority to military mission
- o creation of a commission to draft a comprehensive Federal disaster response statute to simplify, clarify, and focus Federal disaster response efforts

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## I. INTRODUCTION

### What's the problem?

The Loma Prieta earthquake. Hurricane Hugo. Hurricane Andrew. Hurricane Iniki. These disasters had one thing in common - the outcry over the poor Federal response and the role of the Federal Emergency Management Agency (FEMA) in particular.

The U.S. General Accounting Office (GAO), FEMA's Inspector General (IG), the U.S. Forces Command (FORSCOM), and the National Academy of Public Administration (NAPA) studied Federal performance in these disasters and recommended fundamental changes.

### What did the critics say?

GAO found that the Federal government needed to --

- o improve its ability to assess damage and respond to immediate disaster needs
- o assess State and local damage response capabilities
- o act in anticipation of major disasters
- o use the Department of Defense (DOD) for mass care
- o use National Preparedness assets for disaster response
- o get a natural disaster "czar" <sup>1</sup>

The NAPA went beyond GAO, arguing for --

- o a depoliticized and more professional FEMA
- o better Congressional oversight
- o a consolidated Federal disaster assistance statute

- o better Federal, State, and local organization and coordination<sup>2</sup>

The FEMA IG's most significant policy recommendation was --

- o statutory authority for FEMA to act in preparation for a disaster<sup>3</sup>

FORSCOM's significant policy issue was --

- o statutory authority to order Selected Reservists to active duty for disaster response<sup>4</sup>

#### **What's the solution?**

The Federal government must change how it thinks about major disasters. We need a major review of disaster response laws, and a comprehensive law defining the Federal disaster response role. This paper describes the history of Federal major disaster response. It uses the GAO, FEMA IG, FORSCOM, and NAPA studies to describe the changes needed to create a better Federal disaster relief organization. It includes a draft of needed legislative changes with a section-by-section analysis.

## **II. HISTORY OF FEDERAL DISASTER RELIEF**

### **A. The Constitution**

The seeds of the Federal inability to adequately respond to major disasters are imbedded in the Constitution. Intended to create a national government of limited powers, the Constitution spells

out in some detail the responsibilities of the Federal government,<sup>5</sup> but reserves to the States (or the people themselves) all powers not delegated to the Federal government.<sup>6</sup> As Madison said in the Federalist Papers, "The powers delegated by the ...Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite...The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."<sup>7</sup>

One of the powers considered to be within the purview of the States is disaster relief. Historically, Federal disaster relief has been limited and ad hoc. For the most part, Federal assistance was after the fact, requiring special legislation. The need for special legislation meant that Federal assistance arrived well after the disaster, doing little to relieve the immediate suffering.<sup>8</sup>

#### **B. Role of the Military**

The military has responded quickly and effectively to assist State and local authorities faced with major disasters. Between 1868 and 1898 the Army alone participated in at least 17 disaster relief operations.<sup>9</sup> Often this assistance was rendered without formal authorization from Congress or the President, but was ratified after the fact.<sup>10</sup>



The best example of military assistance to local authorities was during the San Francisco earthquake of 1906. Immediately after the earthquake, the local Army commander put his command at the Mayor's disposal, mobilizing troops and equipment to protect property and civilians. The Navy played an equally important role, assisting relief efforts and transporting additional troops and equipment to San Francisco. The military worked closely with State and local officials, at their direction, without formal authority from Washington.

The result was a great success. The military assistance was crucial in limiting damage and in caring for the civilian population.<sup>11</sup>

However, for every disaster where military forces could react quickly to ameliorate the effect of a major disaster, there were other disasters where there was no immediate Federal help. For example, the 1889 Johnstown flood left over 2200 dead and thousands more homeless. Foretelling the Hurricane Andrew situation, State officials did not seek Federal assistance until days after the disaster.<sup>12</sup> Relief was handled by local, State, and private organizations, and by the survivors themselves.

Thus, while the military has had a role in disaster relief, it has acted in response to civilian requests and subject to civilian control, reacting as circumstances dictate.

### C. Federal Disaster Response Programs

It was not until 1950 that the Federal government began to take a systemic approach to disaster assistance. The Civil Defense Act of 1950<sup>13</sup> established a national framework of State and local disaster organizations. It defined the Federal role as secondary to State and local efforts. It focused on defense and recovery from nuclear attack, not on disaster relief.

The Federal Disaster Act of 1950<sup>14</sup> established a Federal disaster relief program, focused not on immediate assistance after a disaster hit, but on longer term recovery assistance such as housing grants and loans. It also defined the Federal role as secondary to State and local efforts.

For the next two decades, Federal programs continued to focus on civil defense against nuclear attack and long term recovery from natural disasters. Incremental changes were made in Federal programs after the 1964 Alaska earthquake,<sup>15</sup> the 1965 Western floods,<sup>16</sup> Hurricane Betsy (1965),<sup>17</sup> and Hurricane Camille (1969).<sup>18</sup> Again, these ad hoc statutes were directed at recovery, not preparation or relief operations.

In light of these disasters, Congress enacted the Disaster Relief Act of 1970.<sup>19</sup> It had new provisions for Federal mitigation, preparation, and relief responsibilities, but continued the federal government's secondary role in disaster response.

In the years following the 1970 Act two major studies of disaster assistance were conducted, one by the President's Office of Emergency Preparedness,<sup>20</sup> and the other by the National Governors' Association.<sup>21</sup> They make for depressing reading -- showing a Federal disaster program that was complex, disjointed, and torn between civil defense and disaster recovery missions.

In 1979 two things happened that gave a shred of optimism to this area. First, President Carter's Reorganization Plan No. 3 of 1978<sup>22</sup> created the Federal Emergency Management Agency to coordinate Federal emergency management activities. The next year the Federal Disaster Relief Act of 1970 was substantially revised by the Robert T. Stafford Disaster Relief Act of 1979.<sup>23</sup> The intent of both was to improve the Federal government's disaster response. Unfortunately, they didn't work.

#### **D. Recent Federal Disaster Assistance**

In the past five years alone, Federal disaster relief prowess has been tested and found wanting. The Loma Prieta earthquake, and Hurricanes Hugo, Andrew, and Iniki showed that the Federal government can't act quickly enough to provide immediate assistance to communities overwhelmed by major disasters.

Both Hurricane Hugo and the Loma Prieta earthquake led to charges that the Federal response was inadequate. GAO, for example, found weaknesses in preparedness, response, and recovery

operations at both the Federal and State levels. It found that FEMA could not assume the State's role as an immediate responder when the State was unable to act<sup>24</sup>. GAO also criticized inefficiencies in FEMA's response operations.

After the twin disasters of Hugo and Loma Prieta, FEMA pressed forward with the Federal Response Plan (FRP), a lengthy document that spelled out the responsibilities of all Federal agencies in disaster response.<sup>25</sup> The FRP uses matrix management techniques, allowing FEMA to decide, based on the specifics of any given disaster, what agencies will be tasked with what requirements.

The FRP was signed in April 1992. Agencies were assigned primary or secondary responsibility for each of twelve requirements, such as mass care, food, or transportation. In theory, when a disaster struck, FEMA would use the FRP to determine which agency would be tasked to provide the aid needed in the specific situation at hand.

FEMA believed that the FRP would allow timely and efficient Federal response to disasters when needed. Unfortunately, Hurricanes Andrew and Iniki proved FEMA wrong.

On August 24, 1992, Hurricane Andrew, a Force 5 hurricane with sustained winds of up to 145 miles per hour, steamrolled its way across southern Florida.<sup>26</sup> It left 40 dead, 25,000 homes

destroyed, 130,000 homes damaged, and insured losses of \$10.7 billion.<sup>27</sup>

Andrew then veered across the Gulf of Mexico, striking Louisiana on August 26, causing additional damage.<sup>28</sup> Two weeks later Hurricane Iniki struck Hawaii, destroying homes, and infrastructure there.<sup>29</sup>

These disasters quickly strained the ability of the States involved to care for their citizens and protect property. Florida was especially hard hit. FEMA activated the FRP and awaited requests from the State of Florida.<sup>30</sup> Unfortunately, the damage was so tremendous that State officials were unable to comprehend the damage and the needs of people in the disaster area. They couldn't ask for what they didn't know they needed.<sup>31</sup>

By 27 August, the situation in Dade County was so bad that the local emergency administrator asked the now-famous "Where's the cavalry?"<sup>32</sup> question, setting off a flurry of activity at the Federal and State level to get Federal assistance to those who needed it. The President appointed the Secretary of Transportation to be his on-site representative, and by the end of the week 14,500 troops were on their way with millions of dollars of supplies and equipment to help the victims.<sup>33</sup>

### III. THE CRITICS

Immediately after Hurricane Andrew, questions were asked about the response. Why did it take so long? Why couldn't FEMA act more quickly? Why weren't the troops called in earlier?

Some of the most vociferous critics recommended FEMA's abolishment<sup>34</sup> and others urged that DOD take over Federal disaster activities.<sup>35</sup> Members of Congress demanded that something be done to reform a disaster response system that many view as ineffective and wasteful.<sup>36</sup>

A number of insightful reports concerning the Federal response to disasters in light of the Hurricane Andrew experience have resulted in some key findings and recommendations.

#### A. GAO

GAO examined the Federal response and found --

- o the Federal government catastrophic disaster relief strategy was deficient
- o no Federal ability to assess damage and needs
- o a lack of statutory authority for the Federal government to anticipate disaster assistance requests
- o a lack of training and funding for State and local government disaster response
- o DOD can respond effectively to the immediate needs of disaster victims<sup>37</sup>

GAO recommended the following actions -

- o improve FEMA's damage assessment and response abilities
- o develop a disaster response unit able to predict impact, assess damage, evaluate State and local preparedness, estimate response needs, and coordinate response activities
- o allow FEMA and other agencies to act in anticipation of disaster requirements
- o use DOD for mass care
- o use FEMA's civil defense assets for disaster response
- o deemphasize nuclear defense in use of civil defense funds
- o establish a high level disaster "czar"<sup>38</sup>

#### **B. National Academy of Public Administration**

The NAPA also studied the Federal disaster response program, and found --

- o inadequate information on damage
- o insufficient assessment of local needs
- o lack of communication between government entities
- o uncertainty over who would pay for the cost of relief<sup>39</sup>

NAPA made a number of recommendations, some echoing GAO's recommendations and others going much further. Its recommendations included -

- o reorganization and professionalization of FEMA
- o consolidation of Congressional committee oversight

- o new Federal emergency management statutory charter
- o establishment of federal standards for State and local disaster response programs
- o creation of a disaster monitoring unit within the White House<sup>40</sup>

These recommendations, taken together with the FORSCOM after-action report and the FEMA IG report, show the need to create a comprehensive Federal emergency response program -- one that actually works.

I propose legislation to address the shortcomings identified in the aftermath of Loma Prieta, Hugo, Andrew, and Iniki. This legislation is only a first step in a process to improve the Federal government's performance in disaster response. This legislation would create a Federal commission to design a comprehensive Federal disaster response program that consolidates, simplifies, and focuses today's hodgepodge of Federal laws and agencies.

## **VII. A LEGISLATIVE PROPOSAL**

### **A BILL**

To provide for effective Federal response to States in major disasters, and for other purposes.



Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Catastrophic Disaster Response Act of 1993".

## **Title I -- Findings, Purpose, and Definitions**

### **Findings and Purpose**

Sec. 101. (a) The Congress finds --

(1) that while the several States bear the primary responsibility for responding to natural and manmade disasters, the Federal government has the ability, assets, and responsibility to help States respond to major disasters that overwhelm or threaten to overwhelm State and local resources;

(2) that several recent major disasters overwhelmed State and local governments, requiring Federal help;

(3) that the Federal government failed to move quickly to help State and local governments respond to these major disasters, despite having the ability to do so;

(4) that current Federal law does not adequately define the authority of Federal agencies to help State and local governments respond to major disasters; and

(5) that Federal, State and local governments must learn to work together to avoid the confusion, suffering, and wasted effort that has come to mark major disaster response in the United States.

(b) It is the purpose of this Act --

(1) to establish the Federal Emergency Management

Agency as the Federal agency responsible for Federal disaster management;

(2) to clarify the powers of the Federal Emergency Management Agency to --

(a) help State and local governments before disasters occur in estimating assistance requirements, and

(b) inform State and local governments of the Federal help available, and how to get that help;

(3) to insure that the Federal Emergency Management Agency's first priority is mitigation, preparation, response, and recovery assistance for major disasters;

(4) to allow the Department of Defense to help in major disasters to the extent that this mission does not interfere with other operational missions;

(5) to establish the Federal Emergency Management Agency as a nonpartisan, professional agency responsible for disaster assistance; and

(6) to establish within the Executive Office of the President a position responsible for directing Federal help in response to a major disaster.

#### **Definitions**

Sec. 102. As used in this Act --

(1) "Emergency" means any event where the President determines that State and local governments need Federal help to save lives and to protect property and public health and safety,

or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) "Major disaster" means any catastrophe (including any hurricane, tornado, storm, high water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which the President determines causes damage that warrants Federal help under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

(6) "Local government" means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a state or political subdivision thereof.

(7) "Federal agency" means any department, independent

establishment, Government corporation, or other agency of the executive branch of the Federal government, including the United States Postal Service, but shall not include the American National Red Cross.

## **Title II -- Federal Emergency Management Agency**

### **Federal Emergency Management Agency Established; Responsibilities**

Sec 201. The Federal Emergency Management Agency is an executive agency responsible for Federal emergency and major disaster mitigation, preparation, response, and recovery activities; and for other related activities as assigned to it by the President.

### **Federal Emergency Management Agency: Director**

Sec. 202. (a) A Director appointed by the President by and with the advice and consent of the Senate shall head the Federal Emergency Management Agency.

(b) The Director shall be appointed --

(1) from among persons with at least fifteen years' experience in emergency management planning and operations at the local, State, Federal or international level;

(2) without regard to political affiliation;

(3) for a term of ten years.

(c) The Director may be removed from office by the President for--

(1) neglect of duty;

(2) misconduct; or

(3) mental or physical disability.

**Director; Duties when Major Disaster Imminent**

Sec. 203. When the Director believes that a major disaster is imminent, he shall so notify the President and Federal agencies capable of rendering assistance. Federal agencies, when so notified by the Director, shall take all necessary steps to help the Agency.

**Joint Disaster Assessment Teams; Duties**

Sec. 204. (a) When a major disaster occurs, the Director shall send a joint disaster assessment team to the area to assess the damage to the area and the help needed to respond to the disaster. The team shall also assess the ability of the State and local governments to respond to the disaster. The team shall report its findings to the Director.

(b) The Director may request personnel from any other Federal agency to participate as members of assessment teams, and Federal agencies shall comply with such requests unless operational requirements preclude them from doing so.

**Director; Duties upon Receipt of Assessment Report**

Sec. 205. When the Director receives the joint disaster assessment team report, he shall inform the President and governor or governors in question of the team's findings and recommendations, and if he believes that Federal help is

required, shall describe the help that the Federal government can provide.

**Director; Recommendation When State Cannot Respond**

Sec. 206. If the Director believes that the State in question cannot respond to the disaster, he shall inform the President of the situation and recommend what action, if any, the Federal government should take.

**President; Action When State Cannot Respond**

Sec. 207. If the President believes that the State in question cannot respond to the disaster, and if he believes that Federal help is needed to protect life or property or to restore the functioning of State or local government, he may unilaterally declare a state of emergency under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, without a request of the governor in question.

**Title III**

**Executive Office of the President**

Sec. 301. It is the sense of Congress that the President should designate a Special Assistant for Domestic Disaster Monitoring within the Executive Office of the President. The Special Assistant should be responsible for monitoring major disasters from first warnings through response and recovery operations, and Federal help to States and local governments before, during, and

after major disasters strike.

#### **Title IV**

##### **Role of the Department of Defense**

Sec. 401. (a) It is the sense of Congress that the Department of Defense is the Federal agency with the personnel, equipment, training, and organization to respond quickly to major disasters where mass care is required anywhere in the United States, and should be used to provide mass care whenever State, local or private relief organizations cannot adequately respond in a major disaster.

(b) It is the further sense of Congress that the Department of Defense should be used to respond to major disasters whenever its help is required, but only to the extent such help does not interfere with operational requirements.

(c) It is the further sense of Congress that any military help be under the direction and control of civilian authority, and that military forces not be used for law enforcement purposes.

##### **Selected Reserve -- Use in Disaster Response**

Sec. 402. Section 673b of title 10, United States Code is amended --

(1) In subsection (a) by inserting "including major disaster assistance," after "operational mission,"; and

(2) In subsection (b) by deleting ", or to provide

assistance to either the Federal Government or a State in time of serious natural or manmade disaster, accident, or catastrophe".

## **Title V**

### **Commission on Domestic Disaster Assistance**

#### **Sense of Congress**

Sec. 501. It is the sense of Congress that --

(a) the Federal government's ability to respond to a variety of disasters, natural and man-made, is fragmented, disjointed, inefficient, and ineffective;

(b) the multitude of statutes covering Federal disaster assistance are a major cause of the problems that arose in recent major disasters in the United States;

(c) the multitude of Committees of Congress exercising jurisdiction over various facets of Federal disaster assistance is a major cause of the Federal government's disaster assistance problems; and

(d) A comprehensive federal disaster relief statute defining the role of the Federal government in disaster mitigation, preparation, response, and recovery, to include disasters of all types and causes, is needed.

#### **Commission; Established**

Sec. 502. There is established a Commission for the Study of Federal Disaster Assistance. The Commission will examine the current Federal disaster assistance mission, structure, statutes,



and performance. The President shall appoint fifteen members of the Commission, as follows --

- a. three representatives of Federal disaster relief organizations;
- b. three representatives of State disaster relief organizations;
- c. three representatives of local disaster relief organizations;
- d. three representatives of nongovernmental disaster relief organizations; and
- e. three members of the public.

#### **Commission; Report**

Sec. 503. The Commission established by Section 502 of this Act shall prepare a report to the President recommending a comprehensive structure for Federal disaster relief, and shall prepare draft legislation to implement its recommendations. This report shall be completed within 180 days of the Commission's first meeting, but not later than December 31, 1994.

#### **President; Action on Report**

Sec. 504. The President, within 90 days of receipt of the report required by Section 502 of this Act, shall forward the report to the Congress with any recommendations deemed necessary, for its consideration and action.

## **V. ANALYSIS OF THE LEGISLATION**

### **Title I**

Why can't the Federal government respond adequately to major disasters? What are we going to do about it?

**Section 101.** Federal disaster response must improve. Federalism plays an important role in disaster response. State and local governments, in conjunction with private relief agencies such as the American Red Cross, can and do respond well to the vast majority of disasters this country suffers each year.<sup>41</sup>

However, recent events have shown that major disasters can overwhelm State and local abilities to care for their citizens. In these rare occasions, the Federal government must be able to offer the States timely, useful aid. Federal law is unclear in this area,<sup>42</sup> and the Federal focus on nuclear civil defense must now shift to other disasters that are much more likely to occur in the post-Soviet world.

**Section 102.** The Stafford Act definitions, with some modifications, are used to avoid confusion. However, these definitions need revision, and the Commission to be established by this Act should review and revise these definitions, especially those defining "emergency" and "disaster".<sup>43</sup>

## **Title II**

Title II establishes FEMA as an independent Federal agency. Currently FEMA is a creature of Reorganization Plan No. 3, an amalgam of various programs and residuals of other Federal agencies. It needs a clear mission statement and direction.

**Section 201.** This section establishes FEMA and defines its responsibilities. It allows the President to assign it other missions related to its statutory responsibilities.

**Section 202.** Major disaster response is too important to leave to the vagaries of political appointees. The Director of FEMA will be a professional in emergency management, appointed for a ten year term, who can be removed only by the President for cause. Making the FEMA Director a professional and protecting him from political pressure mirrors the requirements and protection for the other Federal officials, such as the judges on the U.S. Court of Military Appeals;<sup>44</sup> the Director, Federal Bureau of Investigation;<sup>45</sup> and the Comptroller General.<sup>46</sup>

**Section 203.** Federal agencies weren't prepared for Andrew. Current law does not allow agencies to anticipate requests for assistance.<sup>47</sup> This section will allow these Federal agencies to prepare to assist FEMA if needed.

**Section 204.** Several of the Hurricane Andrew postmortems

identified FEMA's lack of independent damage assessment.<sup>48</sup> This section will allow the FEMA Director to assemble an assessment team to --

- o assess damage in a disaster area
- o determine the assistance required
- o judge whether the State and local governments concerned can handle the response operation

The Director can request personnel for the team from other Federal agencies, and these agencies will comply with the request unless operational requirements dictate otherwise.

**Section 205.** After Hurricane Andrew, State and local officials didn't seem to know what was needed to respond to the disaster, and how to get that assistance.<sup>49</sup> This section requires the FEMA Director to report to the President and governor in question on the findings of the assessment team. This will help the State and local officials gauge the amount of damage, the needs of the area, what the Federal government can do, and how to get that assistance.

**Section 206.** Some thought that the State of Florida didn't act quickly enough to request Federal assistance.<sup>50</sup> While this is debatable, it does raise a problem: Who will ask for Federal assistance if a major disaster incapacitates State government? Can the President act unilaterally to send disaster assistance without a request for Federal aid? Unfortunately, there are

disasters that could result in the total devastation of State and local government.

Federal law is unclear in this area. While the President has authority to use troops where State law enforcement has broken down, this is limited to the restoration of civil order, and doesn't cover disaster response operations.<sup>51</sup> To remedy this gap, this section requires the FEMA Director to advise the President as to a State's ability to request Federal help.

**Section 207.** This section authorizes the President, after receiving the advice under Section 206, to declare a disaster under the provisions of the Stafford Act and direct Federal aid without a State request.

This departs from the usual rules of federalism. Therefore this authority should be exercised only in the rarest occasions. This authority is necessary, however, because it would be unconscionable to fail to act simply because the State cannot request assistance.

### **Title III**

Title III addresses the GAO and NAPA concern that the President has no immediate staff to advise him on disaster assistance.

**Section 301.** Both GAO and NAPA stress the need for Presidential

involvement in disaster response.<sup>52</sup> While these agencies gave some consideration to making FEMA a Cabinet position, or dividing its duties among other Cabinet agencies, both concluded that neither approach is wise.

Cabinet status isn't the solution. The issue isn't whether the FEMA Director has protocol stature, but whether he access.

The President should designate a Special Assistant for Domestic Disaster Monitoring. He will --

- o coordinate FEMA activities
- o run a Domestic Disaster Monitoring Unit
- o inform the President of disaster assistance needs<sup>53</sup>

This official will facilitate communications between FEMA, the White House, and other Federal agencies, and will insure that the President is kept informed of potential and ongoing disasters.

#### **Title IV**

DOD's disaster relief role has been debated for some time. This Title clarifies DOD's mission and gives it additional authority to carry out that mission.

**Section 401.** A number of commentators have recommended that DOD be given responsibility for disaster response.<sup>54</sup> While the it has the personnel, equipment, and expertise to respond quickly to

major disasters, there are several reasons why DOD should not be given charge of Federal disaster response activities.

Civilian control. Civilian control of the military is a hallmark of American constitutional government. While the military can offer considerable assistance in disaster situations, control of the Federal response should always remain in civilian hands. FEMA, as the Federal agency responsible for disaster response, is capable of managing military assistance and should retain this control.

Combat mission. The mission of our military forces is to defend U.S. interests from threats at home and abroad. The military prowess of our armed forces, so recently demonstrated in Operation DESERT STORM, must be maintained at a high state of training and readiness, and should not be diluted by missions unrelated to combat.

Limited resources. Given its combat mission, DOD cannot guarantee commitment of forces necessary for disaster response. While the military committed significant resources to Hurricane Andrew relief, a major disaster occurring during an operation like DESERT STORM could find the military unable to meet the requirements of both. FEMA therefore should retain leadership in this area, and be able to get assistance from agencies other than DOD when necessary.

In light of these limitations, DOD should not run Federal disaster response. However, DOD should be used as part of Federal disaster response, especially when the requirements for mass care are so great as to overwhelm other mass care providers, as in Hurricane Andrew. DOD disaster assistance, however, shouldn't interfere with operational requirements. All military activities should be under civilian control, and Federal troops should not be used for law enforcement purposes.<sup>55</sup>

**Section 402.** DOD wasn't able to mobilize Selected Reserve units to assist after Hurricane Andrew.<sup>56</sup> While individual Reservists could volunteer under the provisions of 10 U.S.C. 672(d), units couldn't be ordered to active duty under 10 U.S.C. 673b.

When 10 U.S.C. 673b was originally enacted, both DOD and Congress believed that the President had sufficient authority under 10 U.S.C. 331, 332, 333, 3500, and 8500 to use reserve forces in response to domestic disturbances, such as insurrection and natural disasters.<sup>57</sup> The need in Hurricane Andrew, however, wasn't for the restoration of order, but for mass care, engineer assistance, and civil affairs assistance, help that isn't authorized under current law.

This section amends 10 U.S.C. 673b to authorize the mobilization of Selected Reserve units during major disaster response for up to 90 days, with a one time 90 day extension.



## **Title V**

The Federal government's organization for disaster relief is needlessly complex, disjointed, and fragmented. Although commissions are often used as an excuse to do nothing, the Commission established by this Title will accomplish something. The Federal role in disaster relief needs a thoughtful review and concrete recommendations that Congress can use to write a clear, concise, and comprehensive Federal disaster assistance statute.

**Section 501.** A review of disaster response over the last twenty years shows that the Federal government's approach is disjointed, incoherent, and ineffective. Major disasters, which are much more likely to cause death and destruction, have less priority than defense against thermonuclear war. This must change.

In addition, much of the Federal disaster planning and response is handled by other agencies, such as the U.S. Environmental Protection Agency,<sup>58</sup> all with their own requirements for State and local government action. In order to make Federal disaster response programs more intelligent, effective, and useful to State and local governments, we need a comprehensive review of the roles, missions and statutory basis of all Federal disaster programs.

**Section 502.** This section establishes a Commission for the Study of Federal Domestic Disaster Assistance. It will examine the

Federal disaster assistance mission, structure, statutes, and performance. The Commission will consist of members of the public, and people with disaster assistance experience in Federal, State, local, and nongovernmental settings.

**Section 503.** The Commission will prepare a report for the President, including its findings and recommendations for improving Federal disaster assistance, and a structure for a comprehensive disaster assistance program. It will also draft legislation implementing its recommendations.

**Section 504.** The President, upon receiving the Commission's report, will review it and forward it, with his comments and recommendations, to Congress for its consideration.

## **VI. CONGRESSIONAL RESPONSIBILITIES**

Congress shares responsibility for some of the shortcomings in Federal disaster relief. Too often, too little attention is given to Federal disaster relief until a disaster actually occurs. FEMA receives insufficient funding for all aspects of disaster relief, including training, mitigation, and response operations. Committee jurisdiction is fragmented and disjointed.

Each House of Congress should review its committee organization and limit legislative jurisdiction to one authorizing committee.

Congress should give FEMA adequate funding for disaster operations. Finally, every effort should be made to depoliticize disaster management, and to allow FEMA to operate in a professional, nonpartisan manner. First and foremost in everyone's mind should be the safety and welfare of disaster victims.

## **VII. CONCLUSION**

We must seize the opportunity the aftermath of Hurricane Andrew gives us to radically improve the Federal disaster assistance program. The GAO, NAPA, FEMA IG, and FORSCOM reports all contain insightful, practical, and unbiased recommendations that should be implemented. Let's act now so that we can be ready before the next disaster strikes.

1. U.S. General Accounting Office. "Recent Disasters Demonstrate the Need to Improve the Nation's Response Strategy." Testimony before the Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, United States Senate, January 27, 1993 (hereinafter "GAO Report").
2. National Academy of Public Administration. Coping with Catastrophe: Building an Emergency Management System to Meet People's Needs in Natural and Manmade Disasters. February 1993. (hereinafter "NAPA Report").
3. Federal Emergency Management Agency, Office of the Inspector General. FEMA's Disaster Management Program: A Performance Audit After Hurricane Andrew, January 1993 (hereinafter "FEMA IG Report").
4. U.S. Forces Command. Forces Command Hurricane Andrew Response After Action Report, November 20, 1992 (hereinafter "FORSCOM Report").
5. The powers of the Federal government are found in the U.S. Constitution, Article 1, Section 8.
6. See U.S. Constitution, Amendment X.
7. The Federalist No. 45, at 292-293 (J. Madison) (C. Rossiter ed. 1961).
8. "Between 1803 and 1950, over 100 separate special assistance acts were passed by Congress." Executive Office of the President, Disaster Preparedness, 1972.
9. GEN G.R. Sullivan. "Hurricane Andrew, an After-Action Report," Army, Vol. 43, No. 1, at 18.
10. For example, General Winfield Scott used troops to assist local authorities extinguish a major fire in Charleston, South Carolina. He acted on his own authority, reporting his actions to the War Department, which heartily endorsed his actions. The New American State Papers: Military Affairs: 16. National Development and the Military, Item 121.
11. The military's role in the San Francisco earthquake relief effort is described in U.S. War Department. Annual Reports of the War Department for the Fiscal Year Ended June 30, 1906, pp. 91-140. The military also participated quite effectively in the most recent San Francisco earthquake, see Commander, Naval Base San Francisco. 17 OCT 89 Loma Prieta Earthquake After Action Report, February 28,

1990.

12. See McCullough, David G. The Johnstown Flood (1968) for an excellent description of the flood and its aftermath. Troops were not wanted at first in the belief that the people of the disaster area could care for themselves. The great hero of the recovery effort was the American Red Cross, led by Clara Barton. The ARC came of age during the Johnstown disaster, providing mass care for the survivors. Over \$3.7 million was contributed from private sources for disaster relief, along with trainloads of donated supplies.

13. 50 U.S.C. App. 2251 et seq.

14. Pub. L. 81-875, 64 Stat. 1109.

15. Pub. L. 88-451, 78 Stat. 505.

16. Pub. L. 89-41, 79 Stat. 131.

17. Pub. L. 89-339, 79 Stat. 1301.

18. Pub. L. 91-79, 83 Stat. 125.

19. Pub. L. 91-606, 84 Stat. 1744.

20. Office of Emergency Preparedness. Disaster Preparedness: A Report to the Congress, 1972.

21. National Governors' Association. 1978 Emergency Preparedness Project: Final Report, 1978.

22. Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp., p. 329.

23. 42 U.S.C. 5121 et seq.

24. U.S. General Accounting Office. Disaster Assistance: Federal, State, and Local Responses to Natural Disasters Need Improvement, March 1991.

25. Federal Emergency Management Agency. Federal Response Plan, April 1992.

26. FEMA IG Report at p. 7.

27. Id.

28. Id.

29. Id at p. 8.

30. FEMA IG Report, pp. 40-42.

31. GAO Report, pp. 8-10.

32. Kate Hale, the Director of Dade County's Office of Emergency Management, three days after President Bush visited the disaster area, called a press conference and asked "Where the hell is the cavalry on this one? We need food. We need water. We need people. For God's sake, where are they?" Mathews, Tom et al. "What Went Wrong", Time, September 7, 1992. 22-27; 23.

33. Id. All told, 24,000 Federal troops participated in the response to Hurricane Andrew. FORSCOM Report at p. 4.

34. See Korb, Lawrence J. and Kupperman, Robert H. "Abolish the Disaster Agency." The New York Times, September 6, 1992: A11.

35. Booth, William. "Hugo Survivor Wonders: Does Washington Learn?" The Washington Post, September 16, 1992: A6. Joseph Riley, the Mayor of Charleston, South Carolina during Hurricane Hugo, believes that the military should have an immediate disaster relief mission.

36. See, for example, Healy, Melissa, and Stolberg, Sheryl. "Hurricane Relief Blows in Winds of Change." The Los Angeles Times, September 11, 1992: 4; and Claiborne, William. "After Storms and Controversy, What's in Store for FEMA?" The Washington Post, October 6, 1992: A19.

37. GAO Report, pp. 1-2.

38. Id. at p. 2.

39. Fosler, R. Scott. Statement before the VA, HUD, and Independent Agencies Subcommittee, Committee on Appropriations, United States Senate, on Governmental Capabilities to Respond to Major Natural Disasters, January 27, 1993. Mr. Fosler is the President of NAPA.

40. NAPA Report. The Report also recommended that FEMA's classified programs be transferred to DOD. Due to the sensitive nature of these programs, this paper will not discuss this important recommendation.

41. FEMA has done good work, and has been limited by funding constraints at least partly beyond its control. See Committee on Environment and Public Works, United States Senate. "The Federal Emergency Management Agency: Lessons Learned." Hearings before the Subcommittee on Water Resources, Transportation, and Infrastructure, May 15, 1991; and Committee on Public Works and Transportation, House of Representatives. "Federal Emergency Management Agency's Response to Natural Disasters." Hearings before the Subcommittee on Investigations and Oversight, May 1 and 2, 1990. Witnesses at both hearings noted many of FEMA's successes

and its need for addition funding.

42. See FEMA IG Report pp 40-43.

43. NAPA report at pp. 78-79.

44. 10 U.S.C. 942. COMA judges serve 15 year terms, must be members of the bar, and can be removed by the President only for cause.

45. Pub. L. 90-351, sec. 1101, 82 Stat. 236, June 19, 1968, as amended by Pub. L. 94-503, sec. 203, 90 Stat. 2427, October 15, 1976. The FBI Director serves a 10 year term.

46. 31 U.S.C. 703. The Comptroller General serves a 15 year term, and can only be removed for cause by Congress.

47. FEMA IG Report at pp. 39-43.

48. See, e.g., FEMA IG Report at pp. 50-55.

49. See, e.g., FEMA IG Report at pp. 38-43; and Mathews article.

50. Mathews article.

51. See 10 U.S.C. 331, 332, 333, 3500, and 8500.

52. See GAO Report at pp. 31-33; and NAPA Report at pp. 21-38.

53. See GAO Report at p. 32; and NAPA Report at p. 38.

54. See, e.g., Korb article and Booth article.

55. The Posse Comitatus Act, 18 U.S.C. 1385, prohibits the use of Army and Air Force personnel for law enforcement. DOD has administratively extended this prohibition to include the Navy.

56. FORSCOM Report at p. 6; GAO Report at pp. 18-19.

57. See Committee on Armed Services, United States Senate. Enabling the President to Authorize the Involuntary Order to Active Duty of Selected Reservists for a Limited Period Without a Declaration of War or National Emergency. Report No. 94-562, December 1, 1975; and Committee on Armed Services, House of Representatives. Authority for Limited Reserve Mobilization. Report No. 94-1069, April 29, 1976.

58. See, e.g., The Emergency Planning and Community Need-to-Know Act of 1976, Pub. L. 99-499, 100 Stat. 1729, October 17, 1986.